

# ALCOHOLIC BEVERAGES DIVISION[185]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby gives Notice of Intended Action to amend Chapter 1, “Organization and Operation,” Chapter 2, “Agency Procedure for Rule Making,” Chapter 3, “Declaratory Orders,” and Chapter 19, “Waivers from Rules,” Iowa Administrative Code.

The proposed amendments rescind obsolete language that pertains to state-owned liquor stores, rescind language that is redundant because the subject matter is specifically addressed in the Iowa Code, incorporate language from the Uniform Rules on Agency Procedure that was not originally adopted, update contact information for the Alcoholic Beverages Division, and correct Iowa Code citations.

Interested parties may make written or oral comments on the proposed amendments on or before June 19, 2012. Comments should be directed to Stephanie Strauss, Executive Officer, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021; or by E-mail to [Strauss@IowaABD.com](mailto:Strauss@IowaABD.com).

A public hearing on the proposed amendments will be held Tuesday, June 19, 2012, from 10 to 11 a.m. in the Board Room of the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa. The hearing room is fully accessible. Persons wishing to speak at the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 123 and 17A.

The following amendments are proposed.

ITEM 1. Amend rule 185—1.2(123,17A) as follows:

**185—1.2(123,17A) Scope and rules.** Promulgated under Iowa Code chapters 17A and 123, these rules shall apply to all matters before the alcoholic beverages division. No rule shall in any way relieve a ~~wholesaler, manufacturer, vintner, rectifier,~~ certificate of compliance holder, manufacturer, micro-distiller, vintner, brewer, wholesaler, alcohol carrier, wine direct shipper, liquor control licensee or wine permittee or beer permittee, or an agent or employee thereof from any duty under the laws of this state. ~~All rules relating to the operation of state liquor stores promulgated hereunder shall remain in effect until July 1, 1987.~~

This rule is intended to implement Iowa Code section 123.4.

ITEM 2. Amend rule 185—1.4(123,17A) as follows:

**~~185—1.4~~ 185—1.3(123,17A) Duties of the division.** The alcoholic beverages division administers the laws of this state concerning ~~beer,~~ alcoholic liquor, wine, and ~~wine beer.~~ The division is vested with the sole and exclusive control within the state of Iowa both as purchaser and vendor of all alcoholic liquor sold by distilleries within the state or imported therein, except ~~beer~~ wine and wine beer, except as otherwise provided by law.

ITEM 3. Amend rule 185—1.5(123,17A) as follows:

**~~185—1.5~~ 185—1.4(123,17A) Organization—~~commission.~~**

**1.4(1) Commission.** The alcoholic beverages division consists of five commission members appointed by the governor and confirmed by the senate. The commission acts as a policy-making body

and serves in an advisory capacity to the administrator. ~~The commission meets statutorily on the first of July of each year and thereafter as scheduled by the chairperson.~~ A quorum shall consist of at least three commission members.

~~1.5(1)~~ **1.4(2) Administrator.** Subject to senate confirmation, the governor appoints an administrator who conducts the daily operations of the division as prescribed by Iowa Code chapter 123. ~~These operations consist of but are not limited to:~~

- ~~a. Purchases of alcoholic liquor and wine for resale by the division.~~
- ~~b. The granting, refusing, suspension, or revoking of liquor control licenses, beer permits, wine permits, and special licenses.~~
- ~~c. The establishment of wholesale and retail prices for alcoholic beverages sold by the division.~~
- ~~d. The establishment or discontinuance of state liquor stores.~~

~~1.5(2) Hearing board.~~ Rescinded IAB 8/18/93, effective 7/29/93.

This rule is intended to implement Iowa Code sections 123.5 ~~and~~, 123.6, 123.9, and 123.10.

ITEM 4. Amend rule 185—1.6(123,17A) as follows:

~~185—1.6~~ **185—1.5(123,17A) Central offices.** The central office is located at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021, (515)964-6800; telephone (515)281-7400 or 1-866-469-2223. ~~The central office consists of the office of the administrator of the division, the office of the deputy administrator, the bureaus of store operations, products management, licensing and operations control. The central office is responsible for the operational support of the division including such functions as purchasing, store operations policy and control, products management, licensing, supply and other administrative duties. The central office and~~ is the principal custodian of all divisional orders, statements of law or policy issued by the division, ~~legal documents concerning properties,~~ and other public documents on file with the division.

This rule is intended to implement Iowa Code section 123.4.

ITEM 5. Amend rule 185—1.7(123,17A) as follows:

~~185—1.7~~ **185—1.6(123,17A) Matters applicable to all proceedings.**

~~1.7(1)~~ **1.6(1) Communications.** All communications to the division shall be addressed to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021, unless otherwise specifically directed. Bids, complaints, pleadings, or other papers required to be filed with the division, shall be filed in the office of the ~~secretary to the~~ administrator within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt at the office of the division.

~~1.7(2)~~ **1.6(2) Office hours.** Office hours are 8 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays, Sundays, and official state holidays designated in accordance with state laws.

~~1.7(3)~~ **1.6(3) Public information.** Any interested person may examine all public records of the division including the decisions, orders, rules, opinions, and other statements of law or policy issued by the division in the discharge of its function. These documents may be examined in the offices of the division during regular business hours or on the Web site of the division located at [www.IowaABD.com](http://www.IowaABD.com). Unless otherwise provided by law, all information contained therein shall be made available for public inspection.

ITEM 6. Amend rule 185—2.1(17A) as follows:

**185—2.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

ITEM 7. Amend subrule 2.4(3) as follows:

**2.4(3) Copies of notices.** Persons desiring to receive copies of future Notices of Intended Action by subscription ~~must~~ shall file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the

administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price<sub>2</sub> which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

ITEM 8. Amend rule 185—2.5(17A) as follows:

**185—2.5(17A) Public participation.**

**2.5(1) *Written comments.*** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941, or the person designated in the Notice of Intended Action.

**2.5(2) *Oral proceedings.*** The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request ~~must~~ shall also contain the following additional information:

~~1. a.~~ A request by one or more individual persons ~~must~~ shall be signed by each of them and include the address and telephone number of each of them.

~~2. b.~~ A request by an association ~~must~~ shall be signed by an officer or designee of the association and ~~must~~ shall contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

~~3. c.~~ A request by an agency or governmental subdivision ~~must~~ shall be signed by an official having authority to act on behalf of the entity and ~~must~~ shall contain the address and telephone number of the person signing that request.

**2.5(3) *Conduct of oral proceedings.***

*a. Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b” as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

*b.* No change.

*c. Presiding officer.* The agency, a member of the agency, or another person designated by the agency who ~~will be~~ is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

*d.* No change.

**2.5(4) No change.**

**2.5(5) *Accessibility.*** The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the alcoholic beverages division at ~~(515)281-7430~~ (515)281-7400 or 1-866-469-2223 in advance to arrange access or other needed services.

ITEM 9. Amend rule 185—2.6(17A) as follows:

**185—2.6(17A) Regulatory analysis.**

**2.6(1) *Definition of small business.*** A “small business” is defined in ~~1998 Iowa Acts, chapter 1202, section 10(7);~~ Iowa Code section 17A.4A(8) “a.”

**2.6(2) Mailing list.** Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. The application for registration shall state:

*a. to e.* No change.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The agency may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

**2.6(3)** No change.

**2.6(4) Qualified requesters for regulatory analysis—economic impact.** The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2a)~~, Iowa Code section 17A.4A(2) "a" after a proper request from:

*a. and b.* No change.

**2.6(5) Qualified requesters for regulatory analysis—business impact.** The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2b)~~, Iowa Code section 17A.4A(2) "b" after a proper request from:

*a. to d.* No change.

**2.6(6) Time period for analysis.** Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in ~~1998 Iowa Acts, chapter 1202, section 10(4)~~ Iowa Code section 17A.4A(4).

**2.6(7) Contents of request.** A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(1)~~ Iowa Code section 17A.4A(1).

**2.6(8) Contents of concise summary.** The contents of the concise summary shall conform to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(4,5)~~ Iowa Code section 17A.4A(4), (5), and (6).

**2.6(9) Publication of a concise summary.** The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with ~~1998 Iowa Acts, chapter 1202, section 10(5)~~ Iowa Code section 17A.4A(6).

**2.6(10) Regulatory analysis contents—rules review committee or rules coordinator.** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2a)~~, Iowa Code section 17A.4A(2) "a" unless a written request expressly waives one or more of the items listed in the section.

**2.6(11) Regulatory analysis contents—substantial impact on small business.** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2b)~~. Iowa Code section 17A.4A(2) "b."

ITEM 10. Amend subrule 2.7(1) as follows:

**2.7(1) Fiscal impact statement.** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services ~~must~~ shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement ~~must~~ shall satisfy the requirements of Iowa Code section 25B.6.

ITEM 11. Amend subrule 2.10(2) as follows:

**2.10(2) *Public proceedings on rules adopted without them.*** The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 2.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 2.10(1). Such a petition ~~must~~ shall be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule ~~must~~ shall be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 2.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

ITEM 12. Amend subrule 2.11(1) as follows:

**2.11(1) *General.*** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement ~~must~~ shall be in writing and be delivered to the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

ITEM 13. Amend subrule 2.12(1) as follows:

**2.12(1) *Contents.*** Each rule adopted by the agency shall contain the text of the rule and, in addition:

- a. No change.
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by ~~1998 Iowa Acts, chapter 1202, section 8,~~ Iowa Code section 17A.4A(1) "b" or the agency in its discretion decides to include such reasons;
- c. to e. No change.
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by ~~1998 Iowa Acts, chapter 1202, section 8,~~ Iowa Code section 17A.4(2) or the agency in its discretion decides to include such reasons; and
- g. No change.

ITEM 14. Amend rule 185—2.13(17A) as follows:

**185—2.13(17A) Agency rule-making record.**

**2.13(1) *Requirement.*** The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference ~~must~~ shall be available for public inspection.

**2.13(2) *Contents.*** The agency rule-making record shall contain:

- a. to g. No change.
  - h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section ~~17A.4(2)~~ 17A.4(4) by the administrative rules review committee, the governor, or the attorney general;
  - i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section ~~17A.4(4),~~ 17A.4(6) "a," and any agency response to that objection;
  - j. and k. No change.
- 2.13(3) and 2.13(4)** No change.

ITEM 15. Amend rule 185—2.14(17A) as follows:

**185—2.14(17A) Filing of rules.** The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing ~~must~~ shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule ~~must~~ shall have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement ~~must~~ shall be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

ITEM 16. Amend subrule 2.16(1) as follows:

**2.16(1) Compilation, indexing, public inspection.** The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section ~~47A.2(10)~~ 17A.2(11) “a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation ~~must~~ shall also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section ~~47A.2(7)~~ “f,” 17A.2(11) “f,” or otherwise authorized by law to be kept confidential, the compilation ~~must~~ shall be made available for public inspection and copying.

ITEM 17. Amend subrule 2.17(2) as follows:


**2.17(2) Formal review process.** In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report ~~must~~ shall include a concise statement of the agency’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the agency’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report ~~must~~ shall also be available for public inspection.

ITEM 18. Amend **185—Chapter 2**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A ~~as amended by 1998 Iowa Acts, chapter 1202.~~

ITEM 19. Amend rule 185—3.1(17A) as follows:

**185—3.1(17A) Petition for declaratory order.** Any person may file a petition with the alcoholic beverages division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division, at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. A petition is deemed filed when it is received by ~~that office~~ the division. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition ~~must~~ shall be typewritten or legibly handwritten in ink and ~~must~~ shall substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	
	PETITION FOR DECLARATORY ORDER

The petition ~~must~~ shall provide the following information:

1. to 7. No change.

8. Any request by petitioner for a meeting provided for by rule 185—3.7(17A).

The petition ~~must~~ shall be dated and signed by the petitioner or the petitioner's representative. It ~~must~~ shall also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

ITEM 20. Amend subrule 3.3(3) as follows:

**3.3(3) Filing of petition.** A petition for intervention shall be filed at 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention ~~must~~ shall be typewritten or legibly handwritten in ink and ~~must~~ shall substantially conform to the following form:

ALCOHOLIC BEVERAGES DIVISION	
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention ~~must~~ shall provide the following information:

1. to 6. No change.

The petition ~~must~~ shall be dated and signed by the intervenor or the intervenor's representative. It ~~must~~ shall also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

ITEM 21. Amend rule 185—3.5(17A) as follows:

**185—3.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941.

ITEM 22. Amend subrule 3.6(2) as follows:

**3.6(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021-3941. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

ITEM 23. Amend subrule 3.8(1) as follows:

**3.8(1) Agency action.** Within the time allowed by ~~1998 Iowa Acts, chapter 1202, section 13(5); Iowa Code section 17A.9(5)~~ after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9(5).

ITEM 24. Amend rule 185—3.9(17A) as follows:

**185—3.9(17A) Refusal to issue order.**

**3.9(1) Refusal to issue order.** The division shall not issue a declaratory order where prohibited by ~~1998 Iowa Acts, chapter 1202, section 13(1)~~, Iowa Code section 17A.9(1) "a" and "b" and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. to 10. No change.

**3.9(2) Grounds for refusal.** A refusal to issue a declaratory order ~~must~~ shall indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**3.9(3)** No change.

ITEM 25. Amend rule 185—3.10(17A) as follows:

**185—3.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order ~~must~~ shall contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

ITEM 26. Amend **185—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A ~~as amended by 1998 Iowa Acts, chapter 1202.~~

ITEM 27. Amend subrule 19.3(2) as follows:

**19.3(2) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

*a.* to *c.* No change.

*d.* Relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

*e.* to *j.* No change.

ITEM 28. Amend rule 185—19.10(17A) as follows:

**185—19.10(17A) Appeals.** Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A. ~~An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by statute or rule.~~